

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff(s),

v.

DAVID EUGENE THOMPSON, SR.,

Defendant(s).

NO. CR07-436MJP

ORDER ON DEFENDANT'S
MOTION TO RECONSIDER
SENTENCE

The above-entitled Court, having received and reviewed

1. Defendant's Motion to Re-evaluate Sentence and Release (Dkt. No. 103)
2. United States' Response to Defendant's Motion Requesting Reconsideration of His Sentence (Dkt. No. 105)

and all attached declarations and exhibits, makes the following ruling:

IT IS ORDERED that Defendant's motion is DENIED.

Discussion

In his motion, Defendant argues (without reference to specifics) that, because he is not being provided with proper medical care and treatment by the Bureau of Prisons, the Court should reconsider its sentence of 36 months' confinement based on Defendant's conviction for possession of a firearm by a convicted felon. The remedy he seeks is home detention as opposed to incarceration.

Defendant currently has an appeal pending before the Ninth Circuit – this fact alone deprives this Court of jurisdiction to act on his request. Even were that not the case, a district court may only modify a previously imposed sentence pursuant to statutory authorization. United States v. Smartt, 129 F.3d 539, 540 (9th Cir. 1997)(citing United States v. Mendoza, 118 F.3d 707, 709 (10th Cir.

1 1997)). None of the circumstances outlined in 18 U.S.C. § 3582 which permit alteration of a final
2 judgment – statutory permission or remand following successful appeal – are present here.

3 Furthermore, Defendant offers no proof that he has exhausted the administrative remedies
4 available to him for redress of his concerns. See 28 C.F.R. Part 542. Even if this Court had
5 jurisdiction to address his claims, it would not be possible without satisfaction of the exhaustion
6 requirement.

7 Defendant's motion is DENIED.

8
9 The clerk is ordered to provide copies of this order to Defendant and all counsel.

10 Dated: April 13, 2010

11
12 

13 Marsha J. Pechman
14 U.S. District Judge
15
16
17
18
19
20
21
22
23
24
25